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DONNA CORBELLO

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DONNA CORBELLO, an individual,  
  
Plaintiff,  
  
vs.  
  
THOMAS GAETANO DEVITO, an  
individual, *et al.*,  
  
Defendants.

Case No. 2:08-cv-00867-RCJ-PAL

**PLAINTIFF'S MOTION FOR LEAVE  
TO FILE CERTAIN EXHIBITS TO  
PLAINTIFF'S MOTION TO COMPEL  
ANSWERS TO INTERROGATORIES  
AND THE PRODUCTION OF  
DOCUMENTS BY DEFENDANT, DES  
MCANUFF (DOC. 362) UNDER SEAL**

Plaintiff Donna Corbello, by her attorneys, and pursuant to the *Stipulated Protective Order* (Doc. 94) entered into by the parties, and the Court's *Protective Order Governing Confidentiality of Documents* entered on January 5, 2009 ("Order Regarding Sealing Requirements") (Doc. 95), herewith requests leave to file certain documents under seal as

exhibits to *Plaintiff's Motion to Compel Answers to Interrogatories and the Production of Documents by Defendant, Des McAnuff* (Doc. 362) ("Motion to Compel").

### **MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to her obligations under the *Stipulated Protective Order* and *Order Regarding Sealing Requirements*, Plaintiff seeks an order permitting her to file the following documents under seal, which were produced by Defendants Frankie Valli, Robert J. Gaudio, Marshall Brickman, Eric S. Elice, DSHT, Inc., Dodger Theatricals, Inc., and/or JB Viva Vegas, LP (the "New Defendants"), and/or by third party Kevin Kinsella ("Kinsella"), and/or by third party Charles Alexander ("Alexander"), and marked "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL" thereby, which she intends to attach as exhibits to her *Motion to Compel*, as to Defendant Des McAnuff ("McAnuff"):

- JB-0027245, JB-0027257, JB-0027275, JB-0027280, JB-0027325, JB-0027448, JB-0027467, JB-0027468, JB-0027474, JB-0027505, JB-0027576, JB-0027590, JB-0027591, JB-0027629, JB-0033051 to JB-0033053, JB-0033055 to JB-0033057, JB-0033059 to JB-0033067, JB-0033069 to JB-0033071, JB-0033073, JB-0033080, JB-0033082 to JB-0033083, JB-0033085, JB-0033087, and JB-0033150, consisting of e-mails to and from McAnuff regarding the creation of Jersey Boys.
- JB-002334 to JB-002335, JB-0027002, JB-0027295, JB-0054382, and JB-0062289, consisting of communications to and from New Defendants regarding the Work.
- Exhibit 4 are McAnuff's relevant, written discovery responses.
- JB-00274377 to JB-0027492, consisting of the August 2005 Director's Agreement.
- JB-0030446 to JB-0030452, consisting of correspondence regarding the McAnuff/Skunk director's agreements.
- KINSELLA-005585, consisting of a communication regarding McAnuff's investment interest, produced by a third party.

- ALEX-00134, consisting of an e-mail regarding the authorship of The Work, produced by a third party.

**I. ARGUMENT**

There is an exception to the normal presumption of access to judicial records, for “sealed discovery document[s] [attached] to a non-dispositive motion,” such that “the usual presumption of the public's right of access is rebutted.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179-1180 (9th Cir. 2006) (citing *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)). The public has less of a need for access to court records attached only to non-dispositive motions because those documents are often “unrelated, or only tangentially related, to the underlying cause of action.” *Id.* (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)). Moreover, “public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Id.* (citing *Phillips*, 307 F.3d at 1213). Finally, when a district court grants a protective order to seal documents during discovery, “it already has determined that ‘good cause’ exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality.” *Id.* Accordingly, “good cause” exists for the filing of the foregoing documents under seal.

Pursuant to the *Stipulated Protective Order* herein, Plaintiff has an obligation to maintain the confidentiality of any document marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” by an opposing party, and the documents identified above were so marked by the New Defendants, Kinsella, and Alexander. Accordingly, Plaintiff may not file the documents with the Court without obtaining an Order and/or filing them under seal. Whereas, Plaintiff’s *Motion to Compel* is not a dispositive motion, the filing of these documents under seal falls within the exception to the general presumption of public access carved out by the courts of this Circuit for documents attached to non-dispositive motions. Accordingly, leave to file the subject documents under seal should be granted.

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1 **II. CONCLUSION**

2 IN VIEW OF THE ABOVE, Plaintiff respectfully requests that her present motion be  
3 granted.

4 Dated: December 21, 2010

5 RESPECTFULLY SUBMITTED:

6  
7 /s/Gregory H. Guillot

8 Gregory H. Guillot

9 George L. Paul

John L. Krieger

Robert H. McKirgan

Attorneys for Plaintiff, Donna Corbello

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15 IT IS SO ORDERED:

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18 UNITED STATES MAGISTRATE JUDGE

19 DATED: December 22, 2010  
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**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b), I, Gregory H. Guillot, hereby certify that on December 21, 2010, I electronically filed the foregoing document and this *Certificate of Service* with the Clerk of Court using the CM/ECF system which will send notifications of such filing to the following:

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/s/Gregory H. Guillot